Key Concepts: Criminal Law

1L

WHAT IS CRIMINAL BEHAVIOR?

1. *Conduct* (not just thoughts)
2. With a specific *mental state* (mens rea)
3. That *inflicts or threatens* (causation)
4. *Harm* to individual or public interests
5. *Without justification or excuse*

ACTUS REUS – CONDUCT

1. *Conduct*
2. *Causation*
3. *Social Harm*

- **Conduct itself**
  - Must involve an **act** (brain moving the body; outside force, thoughts, status – not acts)
  - Act must be **voluntary** (involves the mind, not just the brain; involuntary acts are unauthorized by the mind; habit acts are voluntary)

- **Martin v. State** (*drunk at home and then taken into public place by police; not responsible because he was not voluntarily in public*)

Martin v. State variations	Act?	Voluntary?
Sober person who walks outside and drinks heavily; acts disorderly	*Yes*	*Yes*
Drunk person who walks outside and then acts disorderly	*Yes*	*Yes*
Drunk person who has a seizure, falling outside	*Yes*	*No*
Drunk person carried outside at his request	*Yes*	*Yes*
Drunk person carries outside against his will	*No*	*No*
Walks outside; remains quiet; hypnotized by police and becomes disorderly	*Yes*	*No*

  - **Timing:** act and mental state must occur together (concurrence of the elements)
  - **Omissions:** Common law (CL) imposes no duty to help
    - *Exceptions (very similar under MPC):*
      1. *Statute*
      2. *Status- or relationship-based duty*
      3. *Contract*
      4. *Voluntary assumption of care and seclusion*
      5. *Creation of risk or danger*

- **Attendant circumstances** (conditions that must be present in conjunction with conduct that constitute the crime)
  - **Objective facts** only (e.g., whether a building is a residence; whether it's nighttime, etc.)

MENS REA – INTENT

Types of Intent:

- *Purposely* (it is the purpose or goal to achieve a result)
- *Knowingly* (consciously aware that the result is likely; subjective and objective; result substantially certain to occur)
- *Recklessly* (aware of substantial and unjustifiable risk)
- *Negligence* (should have been aware of substantial and unjustifiable risk; gross deviation from reasonable person)
- *Intentionally* (purposely or knowingly)
- *Maliciously* (purposely or recklessly; probably also knowingly)
- *Willfully* (intentionally, knowingly, "evil purpose," and sometimes intent to violate law)
- *Corruptly, feloniously, fraudulently, designedly, wantonly*
- *Strict liability* (liability without regard to fault)

Proving Intent:

- **Scope**
  - Must be proven as to **behavior** and **result**
  - Attendant circumstance elements are often **strict liability**
  - Intent does not equal **motive**
- **Evidence**
  - Confession or admission
  - Circumstantial evidence (inferring intent from conduct and attitude)
  - Motive
- **Regina v. Cunningham** (*removal of gas meter caused gas leak and near asphyxiation of neighbor*)

Specific v. General Intent:

- **General intent:** intent as to the basic conduct in the statute
- **Specific intent:** extra layer of intent, express or implied
  - Acting to do a specific wrong in the future
  - Acting with a specific motive or purpose
  - Acting with knowledge of certain attendant circumstances

Transferred Intent:

Defendant's acts cause harm to a different **victim**, of a different **type**, or to a different **degree**

- Intent **does** transfer to different **victims**
- Intent **does not** transfer to different **types** of harm (harm to people, property, or security)
- Liability attaches to the **lesser degree** crime

MODEL PENAL CODE CULPABILITY LEVELS

Hierarchy of culpability levels:

1. Purpose
2. Knowledge
3. Recklessness
4. Negligence

*Strict Liability (implied)

- Evidence proving higher levels also proves lower
- Each material element has its own culpability level
- Strict liability can only result in fines, not jail time

Culpability	Conduct	Attendant Circ.	Result
Purposse	Conscious purpose or object	N/A	Conscious purpose or object
Knowledge	Aware conduct is of a specified nature	Aware they exist	Practically certain
Recklessness	N/A	Conscious disregard of sub. & unjust. risk	Conscious disregard of sub. & unjust. risk
Negligence	N/A	Unreas. lack of awareness of sub. & unjust. risk	Unreas. lack of awareness of sub. & unjust. risk
Strict Liability	N/A	N/A	N/A

Ambiguities:

- No culpability level – at CL, check history; in MPC, **recklessness is the default**
- Multiple actus reus elements but one culpability level – single **culpability level modifies all** absent clear contrary purpose

Intent Issues:

- No general v. specific issues; every element needs own level
- Transferred intent: intent usually is not transferred with 2 exceptions:
  - ◇ **Different victim** (NOT *additional* victim)
  - ◇ Different **degree** (liability attaches to lesser harm)
    - NOT different *type*

CRIMINAL INTENT – STRICT LIABILITY

Punishment imposed **without regard** to D's **mental state**

- MPC: **not incarceration** crimes
- CL: look to **congressional intent** (express or implied)
  - ◇ **Public welfare** offenses
- **US v. Staples** (*owning an automatic weapon is not inherently dangerous + severe punishment = no strict liability; holding **does not** go so far to say that absence of mens rea requirement, default standard is knowledge*)
- **Morissette v. US** (*"knowing conversion" of property requires knowledge of ownership; collector who thought bomb casings were abandoned is not guilty*)

CRIMINAL INTENT – MISTAKE OF FACT

Honest mistake as to **attendant circ.** that the government must prove as an **element** of the crime

- NOT an affirmative defense; goes to prima facie case
  - ◇ **Specific Intent** – negated by honest mistake of fact, even unreasonable
  - ◇ **General Intent** – mistake must be honest and reasonable
  - ◇ **Strict Liability** – mistake has no effect
- **People v. Navarro** (*D took wooden beams from construction site that he thought were abandoned; negated specific intent*)
- **MPC:** mistake of fact is a defense when it negates degree of culpability
  - ◇ No general vs. specific intent
  - ◇ No reasonable vs. unreasonable mistake

CRIMINAL INTENT – MISTAKE OF LAW

Usually, ignorance of law is no excuse. Exceptions:

Traditional/Reasonable Reliance (mistake as to the definition or coverage of the law)

- Reasonable reliance on **official statement of the law** that authorized behavior at the time but was later declared wrong
- "Official statement" sources:
  - ◇ **Statute** later declared invalid
  - ◇ **Judicial decision** of higher court later overturned
  - ◇ **Official interpretation** from person or public body charged with interpreting or enforcing the law
- **NY v. Marrero** (*C.O. believed he was covered by peace officer exception, but based only on his own interpretation; guilty*)

Elemental Claim (no knowledge of law whose statute specifically requires knowledge)

- Only works with **specific intent** crimes
- Reasonable mistake does not excuse **general intent** crime
- **Cheek v. US** (*not guilty of "willful" tax evasion because D didn't think he owed taxes on certain money*)

Due Process Claim (no fair notice of the law's existence)

- Affirmative defense
- **Lambert v. California** (*no notice that D had to register as a felon w/in 5 days of moving, so no violation*)
  Factors: 1. *omission, not action*
  2. based on status, not activity
  3. offense regulatory, not dangerous

MPC: Mistake of Law defense if:

- If it negates culpability required (elemental)
- If statute has not been made public (due process)
- If reliance on official statement (reasonable reliance)

CAUSATION – ACTUAL CAUSE

But-for Causation (the result would not have occurred when it did but for the D's conduct)

- Temporal element is key

Concurrent Sufficient Causes (CSC) (two Ds, acting independently, commit two separate acts, each of which is sufficient to cause the result in question)

- Not accomplices; both can be but-for causes

Acceleration Causation (non-fatal blow accelerates death; still a but-for cause)

- Only one D inflicts mortal bow

MPC: temporal and CSC but-for causation

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CAUSATION – PROXIMATE CAUSE

Once but-for cause has been found, is it fair to hold D guilty?

Intervening Events:

- Act of God
- Act of independent third party that aggravates or accelerates harm, or unexpected manner of harm
- Act or omission of victim

Factors in Assessing Liability:

- De minimis contribution (*D's conduct insubstantial compared to intervening event*)
- Omissions (*rarely to negative acts cut off responsibility for affirmative act*)
- Intended consequences (*if result wrongdoer intends comes about, even in a roundabout way, D is guilty; actual manner must match*)
- Apparent safety (*if victim reaches position of apparent safety, D should no longer be liable*)
- Free, deliberate, and informed human intervention (*after D's attack on victim, chain of causation won't go back to D*)
- Reasonable foreseeability (*D can't escape liability if intervening act was reasonably foreseeable*)

MPC: asks whether result is "too remote or accidental"

PARTICIPANTS IN CRIME

Traditionally

- Principal in the first degree (*"triggerman"*)
- Principal in the second degree (*present and participates, e.g., lookout*)
- Accessory before or after (*not present, but gives assistance*)

Modern

- Principal (*person who commits the crime*)
- *Accomplices (principals in the second degree, accessories before the fact)*
  - Principals and accomplices subject to **full liability**
- Accessories after the fact (*lower liability*)

ACCOMPLICE

Conduct: assistance, aid, encouragement

- Physical conduct (*providing equipment, casing scene, signaling/ lookout, getaway driver, blocking victim's escape*)
- Psychological influence (*counseling, soliciting, encouraging*)
  - Mere presence, uncommunicated intent, acquiescence – not enough
  - Presence + support – enough (low bar)
- Omission (*duty to act but fails w/ desire for crime to occur*)
  - Unsuccessful attempt to aid is not enough

MPC Conduct:

- Soliciting principal
- Aiding, agreeing to aid, or attempting to aid principal
- Having a legal duty but failing to take action
- Unsuccessful aid IS enough (CL minority, too)

Intent: Two levels of intent:

1. Intent to **assist principal**
2. Intent for **underlying offense** to occur:
   - Intent for principal to commit **actus reus**
   - Intent for principal's acts to produce **results**
   - Intent as to **attendant circumstances**

- Intent re: **actus reus**
  - Purpose, not just knowledge
  - CL and MPC
- **People v. Lauria** (*phone service used by prostitutes; owner knew of but had no real interest in prostitution*)
- Intent re: **results**
  - If reckless or negligence required for underlying crime, MPC and majority require only recklessness or negligence from accomplice
    - Minority requires purpose or knowledge
  - If purpose or knowledge for principal, then purpose or knowledge for accomplice
- Intent re: attendant circumstances
  - Little caselaw and MPC is silent

Extent of Accomplice Liability

Liability extends to any crime that is the **natural & probable consequence** of the crime the accomplice wanted to result

- MPC rejects that rule; only **accomplice's own mental state**

HOMICIDE

Homicide: Killing of a person without justification or excuse

Murder: Killing of a person with malice aforethought

Manslaughter: Killing of a person w/o malice aforethought

Four Main Types of Murder:

1. Intent to kill (*purposely or knowingly causing death*)
2. Intent to cause great bodily injury (GBI) (*wanting or knowing actions will cause GBI, and death results*)
3. Depraved heart (*acting with extremely reckless disregard for human life, and death results*)
4. Felony murder (*acting with intent to commit a felony, and death results*)

Two Types of Manslaughter:

1. Voluntary (intentional) (*intent to kill developed in the heat of passion, during that heat, result of reasonable provocation*)
2. Involuntary (unintentional) (*death results from act done w/o due caution; negligent homicide; misdemeanor manslaughter*)

	Murder (Malice)	*Manslaughter (No Malice)*
Intent to Kill	Intent-to-kill murder	Voluntary manslaughter
No Intent to Kill	Intent-to-cause-GBI murder, depravedheart murder, felony murder	Involuntary manslaughter, negligent homicide, misdemeanor manslaughter

MPC Homicide:
No degrees of murder
No "malice aforethought"
Criminal homicide is the **purposely, knowingly, recklessly, or negligently** causing the death of another
Three types of MPC Homicide:
1. Murder
2. Manslaughter
3. Negligent homicide

INTENTIONAL MURDER

First-Degree Murder – premeditated and deliberate OR statutory criteria (e.g., lying in wait, police officer)
Second-Degree Murder – intentional, but not premeditated
Premeditation & Deliberation – heightened intent; planned

Premeditation	Deliberation
Forethought	Reflection
Does not require deliberation	Requires premeditation
Takes time	Takes time

Evidence: planning, motive, manner of killing, provocation, conduct/statements, ill will, additional blows, nature of wounds
MPC murder: homicide committed purposely or knowingly
- **Midgett v. State** (*father who killed son in drunken rage showed no premeditation*)
- **State v. Forrest** (*mercy killing of father constituted premeditation*)

VOLUNTARY MANSLAUGHTER

Intentional killing done in the heat of passion, produced by adequate provocation, before D has had time to cool off; need causal connection between provocation, passion, and fatal act

Traditionally limited categories (e.g., finding spouse in bed with another); now anything that could cause **reasonable person** to act in an **uncontrolled emotional state**

- Issue for the jury
- Words are not enough
- Reasonable person is average, sober, and "normal" mental capacity; psychological issues not considered

MPC: murder under extreme mental or emotional disturbance

	Heat of Passion (CL)	*Extreme Emotional Disturbance (MPC)*
Must victim be provoker?	Yes. If another killed, must be accidental.	No link between source of EED and victim.
Cooling-off time	Can't claim provocation after cooling off.	EED can build over time
Proportionality	Response intensity :: provocation intensity	Not relevant

UNINTENTIONAL KILLINGS FROM RISKY BEHAVIOR

E.g., firing gun into crowd, driving drunk, Russian roulette, not feeding child, unsecure dangerous animals, dropping heavy items off a tall building

Second-Degree Murder (Depraved-Heart Murder) (death resulting from acting with extreme recklessness and manifesting extreme indifference to the value of human life)
- Wanton, arrogant, conscious disregard for life
- Objective components (e.g., risk of death); subjective components (e.g., knew behavior put human life at risk)

Involuntary Manslaughter (consciously disregards risk to human life (but not extreme disregard) or gross negligence – gross deviation from standard of care)
MPC:
- **Extreme Reckless Murder** (almost purpose or knowledge)
- **Manslaughter** (ordinary recklessness)
- **Negligent Homicide** (gross deviation)

FELONY MURDER

Homicide caused during **the commission or attempted commission of a felony**
- No mens rea as to homicide; only felony needs to be intended
- **MPC:** commission of listed felonies creates a presumption supporting **"extreme recklessness"** murder charge
- Even without felony-murder statute, almost any felony-murder charge could also be filed as intent-to-cause-GBI murder or depraved-heart murder

Limitations
1. **Inherently dangerous felony** (IDF) (*only IDF give rise to felony murder*)
- Abstract approach: precedent or statutory elements (i.e., can the crime be performed without substantial risk to life?)
- Facts of the case approach: was the manner in which D committed the felony inherently dangerous?
- MPC: a list of felonies (like abstract approach) but both D and Prosecutor can argue, based on the facts of the case, that felony-murder charge is not/is appropriate

2. **Independent felony** (no merger) (*felony must be independent of the homicide; is the felony assaultive?*)

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- Abstract approach: low-level homicides are always assaultive, non-assaultive crimes can be used, assaultive crimes cannot be used
- Purpose approach: facts of the case; what was the defendant's purpose? If only to cause harm, not a predicate felony; if another purpose, can be used

3. **In furtherance…** (*killing must be part of the felony itself*)

- Temporal connection: during commission, attempt, or escape
- Causal connection: but-for and proximate causation
  - ◇ Agency rule (majority) – responsible for deaths caused by felon and accomplices; not by police officers
  - ◇ Proximate cause rule (minority) – responsible for any killing by felon, accomplice, or anyone else if the act was set in motion by behavior of felon or accomplices

ATTEMPT LIABILITY

With intent to commit a substantive offense, D intentionally performs act that brings D close to committing target offense

- Complete attempt (*D does everything necessary to commit target offense, but harm doesn't result*)
- Incomplete attempt (*D has taken some, but not all, steps necessary for target offense*)

Conduct (Actus Reus)

- Complete attempt – same as for target offense
- Incomplete attempt – more than just "mere preparation"
  - ◇ Temporal proximity b/w act and threatened harm
  - ◇ Seriousness of threat (more serious = earlier attempt)
  - ◇ Strength of evidence of intent

Jurisdictional Actus Reus Tests

1. Last Act (D performed all acts believed necessary for target?)
2. Indispensable Element (last indispensable req. element?)
3. Physical Proximity (w/in actor's power to complete crime almost immediately?)
4. Dangerous Proximity (is D dangerously close to success?)
5. Unequivocality (D's conduct unambiguously manifests criminal intent)
6. Probable Desistance (what's the point of no return?)
7. Abnormal Step (any step toward target beyond where ordinary person would go?)
8. MPC Substantial Step (purposely takes act that is a substantial step in course of conduct culminating in crime?)

Intent (Mens Rea)

Two intents required:

1. D must **intentionally commit** the acts = substantial step
2. D must act with **specific intent** to commit the target crime

What did D intend as to result?

- **People v. Gentry** (*husband pours gas on wife, who ignites by stove; attempted murder only if specific intent to kill her*)

MPC attempt: purpose or knowledge of target crime; broad

- No attempted felony murder at CL (need specific intent)
- No attempted depraved-heart murder (unintentional by def.)
- Yes attempted voluntary manslaughter
- No attempted involuntary manslaughter

Target Offense	Attempt Liability Possible?
Intentional Crime	Yes
Non-intentional Crime	No

Attendant Circumstances

CL: knowledge as to attendant circumstances required
Modern Rule 1: knowledge not required; recklessness
Modern Rule 2: knowledge not required; proof of mens rea for underlying/target offense (MPC rules)

Affirmative Defenses

Factual impossibility (not a defense at CL or MPC)
Abandonment (can D abandon after crossing attempt line? Depends on how close to committing target offense)

PROPERTY OFFENSES

Basic Theft Crimes

Larceny (*taking an carrying away the property of another w/o consent and w/ intent to permanently deprive*)

- Virtually any movement = carrying away
- Any personal property
- Specific intent to permanently deprive owner (borrowing doesn't count, but destruction or conversion is not req.)

Embezzlement (*theft of property given to hold temporarily*)

- Often seen in cases with cashiers or auto mechanics

Larceny by Trick (*theft of property given because D lies to get owner's consent*)

Theft by False Pretenses (*obtaining title to property—not just possession—by fraudulent representation*)

Burglary (*breaking and entering a property with the intent to commit a theft or felony inside that property*)

- Actus reus is not the theft or the felony, but the breaking and entering with intent; crime is against the property
- Nighttime might be an attendant circumstance

Robbery (not a property crime) (*theft by force or threat of force from the body of another*)

- Crime is against the person
- Rightful owner can still be a robber if taking property by force or threat of force

CONSPIRACY

An **agreement,** express or implied, between two or more people to commit a criminal act or series of acts.

- **Traditional CL:** Nothing else required
- **Modern Law:** Requires at least one overt act in furtherance
- **MPC:** Conspiracy if D agrees with others to (1) commit an offense, (2) attempt to commit an offense, (3) solicit another to commit an offense, or (4) aid another person in planning or committing an offense

Consequences of Conspiracy

- **Pinkerton Doctrine** (any member of conspiracy is responsible for any reasonably foreseeable crime committed by any other member in furtherance of that conspiracy)
- D can be tried **alone or jointly** in venue of **any overt act**
- **Hearsay** from conspirators can prove coconspirators' guilt

Proving Conspiracy

- Testimony of co-conspirators
- Circumstantial evidence

Overt Act

- Any act; does not need to be illegal
- Liability for conspiracy is earlier on the timeline than attempt
- Overt act can be done by any conspirator and all are liable
- MPC has dropped overt act requirement for serious offenses

Intent – two specific intents required

1. Intent to agree
2. Intent to successfully commit the crime

- Purpose is required; can be inferred from circumstances

Conspiracy with Undercover Officer?

- At CL – no two-person conspiracy with undercover officer
- MPC – yes two-person conspiracy with undercover officer

No Merger with Target Offense

- Can be convicted of conspiracy and target offense
- Can be convicted of conspiracy even if acquitted of target
- MPC: merger; can't be convicted of both

Shapes of Conspiracy (Wheel v. Chain)

Is there one big conspiracy or several small ones?

- **Kotteakos v. US** (*one broker and 31 seekers of fraudulent loans; whether there was one conspiracy with 32 participants or 31 conspiracies depends on awareness of other conspirators*)
- **Blumenthal v. US** (*distillery owner, distributors, retailer or illegal whiskey; D knows of other conspirator's involvement, also responsible for their crimes.*)

Defenses

- **Impossibility** is not a defense at CL or MPC
- **Abandonment or withdrawal:**
  - CL – must communicate w/d to each coconspirator; no liability for subsequent crimes (but not retroactive)
  - MPC – must renounce criminal purpose and thwart success of enterprise to have a full defense

RAPE AND STATUTORY RAPE

Knowingly having sexual intercourse with another person without that person's consent.

- Modern laws are gender neutral
- Some form of marital immunity in minority of jurisdictions

Actus Reus – Nonconsent

- Proof of force or threat of force AND/OR proof of resistance by victim
- "No"
- Absence of affirmatively expressed consent
- Other forms (e.g., drugged, unconscious, mentally disabled)
- Rape by fraud?
  - Fraud in the inducement: convincing someone to have sex by telling lies (e.g., about willingness to marry) – NO RAPE
  - Fraud in the facts: telling someone penetration is with a medical instrument – RAPE

Mens Rea – D's knowledge of Nonconsent

- Recklessness (*honest mistake about consent, reasonable or unreasonable*)
- Negligence (*honest and reasonable mistake*)
- Strict liability (*no mistake is permissible*)
- D's will argue proof of nonconsent (actus reus) first, before claiming mistake

Statutory Rape (sexual intercourse with a person who is not old enough to provide consent; negligence or strict liability)

DEFENSES

Strategies

Procedural Bars (public policy limitations) (*no ruling on the merits; case is dismissed or not filed*)

- Statute of limitations, immunity, defect in the pleading

Failures of Prosecution's Proof (*poking holes in the theory of proof on any element*)

- Mistake of fact, mistake of law, proximate cause

Defenses Specific to the Crime Charged (*after prosecution has closed its case-in-chief*)

- Abandonment of an attempt crime

Justification (*D's acts were morally right*)

- Self-defense, necessity

Excuses (*acknowledges crime, but D shouldn't be blamed*)

- Infancy, insanity, duress, due process mistake of law, reasonable reliance mistake of law

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SELF-DEFENSE AND DEFENSE OF OTHERS

- **Reasonable amount of force**
  - Can use deadly force to meet threat of deadly force, non-deadly force with non-deadly force
  - Deadly force is intended or likely to cause death or GBI
  - Must be **proportionate**
  - **MPC:** deadly force may be used to prevent rape or kidnapping
- **Reasonable and sincere belief necessary**
  - Danger must be **imminent** (pressing or urgent)
  - Non-aggressor (first aggressor—the one who "ratchets up" to deadly force—cannot later claim self-defense)
  - Words are not enough
  - **MPC:** first person who purposely provokes deadly force cannot use self-defense
  - **Withdrawal** (retreat and communicate intent to withdraw)
- **US v. Peterson** (*D who went after thief of wipers with a pistol was not entitled to use deadly selfdefense, even when victim had responded to pistol with lug wrench*)
  - **Retreat** – traditionally, retreat was necessary if possible
    - **Slight majority:** no duty to retreat ("Stand Your Ground" laws)
    - **Minority and MPC:** still a duty to retreat if safe; even in these jurisdictions "Castle Doctrine" says no duty to retreat if attacked in own home.
  - **Reasonableness is an objective standard**
    - Unreasonable belief gives rise to voluntary manslaughter in minority of jurisdictions ("imperfect self-defense")
- **Defense of Others** (right of intervenor is coextensive with victim's right to use force in selfdefense)
  - Force must appear reasonably necessary (need not be correct)
  - **MPC:** no more force than third party would use; actually believe force is necessary; unreasonable use can give rise to reckless/negligent homicide

NECESSITY

a.k.a. Choice of Evils Doctrine (D's acts, though illegal, were necessary to prevent an even greater harm from occurring; no lawful alternatives)

- **Clear and imminent danger**
- **Action will abate the danger** (direct causal claim between action and harm)
- **No reasonable lawful alternatives**
- **Harm is less serious than the harm trying to prevent**
  - Reasonably foreseeable harms
  - Facts as they reasonably appear
  - Harm avoided > harm caused (NOT equal to)
- **Choice does not contradict legislative history**
- **Clean hands** (D is not responsible for the situation)
- **MPC:** notable changes – no clean hands requirement (though D could be prosecuted for recklessness or negligence); imminence is not required (but is considered); no distinction between natural and man-made forces
- **Not generally a defense to homicide**
- **Regina v. Dudley and Stephens** (*lifeboat inhabitants drew straws to kill and eat one to avoid starvation; court said no necessity defense; can't impose comparative value to lives*)
  - **MPC:** does not rule out choice of evils in homicide context

EXCUSES

D acknowledges crime, but should not be blamed or punished because of circumstances

Infancy (*D not old enough to understand actions*)

Duress (*D acting under threat of GBI*)

- Threat must involve threat of serious violence (not economic or embarrassment) by another person
- Use of force must be imminent (not future)
- Threat must be directed at D or someone close to D
- Clean hands
- Severity (threatened force need not exceed crime committed)
  - Not available as a defense to intentional homicide
- Coerced party is acquitted; coercing party should be convicted of the offense committed
- MPC: "person of reasonable firmness" replaced CL elements; can raise in a homicide prosecution

Insanity

Affirmative defense; D must produce evidence regarding mental condition (preponderance or clear and convincing evidence)

- D must prove **mental disease or defect** and that **because** of that defect:
  - **M'Naughten:** D did not know the **nature and quality** of the act AND/OR did not know it was **wrong**
  - **Irresistible Impulse:** Lost power to choose b/w right and wrong OR actions were not subject to **free will**
  - **MPC:** lacked substantial capacity to **appreciate criminality** of the conduct or conform conduct to the law

FUNCTIONS OF PUNISHMENT

The state's deliberate infliction of suffering an stigma on an individual who has done something wrong.

Forms: fine, probation, community service, imprisonment, execution, ancillary penalties

Moral Justification (supported by good reason and proportional to its purpose)

Utilitarianism	Retributivism
Justification lies in the useful purposes that punishment serves.	Punishment is justified because the offender deserves it.

Utilitarianism (useful consequences of punishment)

- Deterrence (individual and general)
- Rehabilitation
- Incapacitation (prevention)
- Legitimization of the legal system
- Norm reinforcement and expression
- Restitution and healing for victims

Retributivism (punitive)

- Symbol of hate that D should feel
- Treats wrongdoer with dignity as a full human being responsible for choices
- Repaying debt to society

Quantity and Type of Punishment

Utilitarianism	Retributivism
Depends on how much punishment is necessary to deter/rehabilitate/incapacitate, etc.	Depends on how bad act was, how much harm was cause, and how bad we think the actor is; can be mitigated by circumstances

Unpleasantness: assumption is that prison time will be experienced as a form of pain (not always the case)

Reasons Not to Punish

- Cost
- Criminal education in prison
- Loss of industry or parenting time
- Brutalizes offenders and society
- Fear of punishment can affect integrity of legal system

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